

PROFFER STATEMENT

TLZM 2013-0006, CRESCENT PARKE

September 18, 2014

December 23, 2014

April 17, 2015

Updated april 23, 2015

MREC LD Leesburg Crossing, LLC, as the owner of approximately 39.71 acres of land, more particularly described as Loudoun County parcel identification numbers (hereinafter, "PIN") 232-37-7166, 232-37-5627 and 232-38-9290, Edward R. Mooney Jr. et al Trustees, the owner of approximately 11.28 acres of land, more particularly described as Loudoun County PIN 232-28-3893, and Failmezger Investments, as the owner of an approximately 2.34 acre portion of a 20.99 acre parcel of land, more particularly described as Loudoun County PIN 232-37-3721 (hereinafter all three owners shall be referred to collectively as the "owner and all parcels collectively referred to as the "Property") hereby voluntarily proffer, pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and Section 3.3.16 of the Town of Leesburg Zoning Ordinance, as amended, that the development of the Property shall be in substantial conformance with the proffers as set forth below. All exhibits referred to in this proffer statement are attached and incorporated into this proffer statement.

All proffers made herein are contingent upon the approval of the rezoning concept plan and proffer amendment request in the pending application and upon approval of the zoning modification requests. These proffered conditions are the only conditions offered on this rezoning application. These proffers shall become effective only upon approval by the Town Council of Leesburg, Virginia, of the Zoning Amendment application TLZM 2013-0006.

1. **LAND USE**

1.1 Concept Plan

Development of the Property shall be in substantial conformance with Sheets 1 - 12, 14 - 23, 27 - 36 of the Zoning Map Amendment Concept Plan, prepared by Bowman Consulting, dated December 23, 2013 (hereinafter referred to as the "CP") and revised through April 17, 2015, which is attached to these proffers as Exhibit A and which shall control the use, layout, and configuration of the Property, with reasonable allowances to be made for engineering and design alteration and to meet Town zoning, subdivision and land development regulations.

1.2 Development Program

The Property shall be developed with a mix of uses as follows:

1.2.1 In the Crescent Design District Commercial (CD-C) zoning district. A maximum of 45,000 square feet of office and retail and other commercial uses.

1.2.2 In the Crescent Design District Mixed-Use Optional (CD-MUO) zoning district. A maximum of 96 multi-family dwellings, 28,625 square feet of retail and 90,000 square feet of office or hotel uses.

1.2.3 In the Crescent Design District Residential High Density (CD-RH) zoning district. A maximum of 209 single family attached dwelling units and 96 single family attached dwelling units in the “stacked townhouse” configuration.

1.3 Development Phasing:

1.3.1 Transportation Improvements. The following transportation improvements shall be constructed in the initial phase of development, as described in Proffer 2 and in substantial conformance with the TLZM 2013-0006 Concept Plan: Davis Avenue and Gateway Drive construction pursuant to proffer 2.2.1; Davis Court relocated pursuant to proffer 2.2.2.1; and the South King Street/Davis Avenue intersection turn lanes pursuant to proffer 2.2.5.

1.3.4 Land Disturbance. The initial phase of development shall not limit land disturbance on any portion of the Property.

1.3.4 Triggers.

1.3.4.1 Occupancy Permits. No occupancy permits shall be approved until the South King Street turn lanes specified in proffer 2.2.5, and the necessary Davis Avenue frontage improvements have been completed and open for traffic.

1.3.4.2 Residential Zoning Permits. Approval of residential zoning permits south of Tuscarora Creek shall be contingent upon the approval of a site plan that permits the construction of Davis Avenue and Gateway Drive from the existing terminus of Gateway Drive to the existing terminus of Davis Drive.

1.3.4.3 Residential Occupancy Permits. Approval of residential occupancy permits south of Tuscarora Creek shall be contingent upon the construction of Davis Avenue and Gateway Drive from the existing terminus of Gateway Drive to South King Street and open for traffic.

1.4 Parking

Parking is being provided as shown on Sheet 2 of the CP, as provided in the parking tabulations shown on Sheet 4 of the CP, and pursuant to the modification of Zoning Ordinance Section 11.3.

2. TRANSPORTATION IMPROVEMENTS

2.1 Sidewalks.

Sidewalks shall be constructed as shown on Sheets 2 and 4 of the CP. Planting areas for internal street trees shall be comprised of enhanced/amended planting media suitable for urban settings and which will be maintained by the Property Owners' Association (POA) established in proffer 6.7.

2.2 Public Street Improvements

2.2.1 Davis Avenue and Gateway Drive Extensions. The Owner shall dedicate a minimum 70-foot wide right-of-way plus any additional right-of-way needed to accommodate turn lanes or the roundabout from the existing terminus of Davis Avenue to the existing terminus of Gateway Drive as shown on Sheet 2 of the CP. The dedication of the right-of-way shall be conveyed in fee simple, free and clear of any and all liens to the Town by a Deed of Dedication. The Owner shall bond for construction of the General Urban Street section as shown on Sheet 4 of the CP, subject to Town approval.

2.2.2 General Urban Streets. The Owner shall dedicate a minimum 70-foot wide right-of-way plus any additional right-of-way needed to accommodate turn lanes for and construct the following General Urban Streets as shown on Sheets 2 and 4 of the CP. The dedication of the right-of-way shall be conveyed in fee simple, free and clear of any and all liens to the Town by a deed of dedication.

2.2.2.1 Davis Court Relocated. The right of way shall be dedicated and be bonded for construction concurrent with Davis Avenue pursuant to proffer 2.2.1.

2.2.2.2 First Street. The right of way shall be dedicated and be bonded for construction prior to the issuance of the first zoning permit for building C-1 or buildings MU-1 through MU-4 and shall be constructed prior to the issuance of the first occupancy permit for building C-1 or for buildings MU-1 through MU-4.

2.2.2.3 General Urban Street A. The right of way shall be dedicated and be bonded for construction prior to the issuance of the zoning permit for building MU-4 and shall be constructed prior to the issuance of the first occupancy permit for building MU4.

2.2.3 Davis Avenue Bridge. The Owner shall bond for construction the bridge over Tuscarora Creek as shown on Sheet 4 of the CP, subject to Town approval, prior to issuance of the first zoning permit for the Property and shall be constructed prior to issuance of the first occupancy

permit for the Property.

2.2.4 Dulles Greenway Extension

2.2.4.1 Right-of-way Reservation. The Owner shall reserve a 90-foot wide strip of land along the eastern Property boundary as shown on Sheet 2 of the CP for the construction of the Dulles Greenway Extension as provided in the Town Plan. The right-of-way reservation shall be shown on the first record plat or site plan, whichever occurs first, which contains buildings HH, JJ, KK or MM as shown on Sheet 2 of the CP. Subject to approval of any required sign permits, the Owner shall install two signs within the right-of-way reservation area facing Gateway Drive and Davis Avenue Extended informing the future residents of Crescent Parke of the eventual planned use of the reservation area. These signs shall be installed prior to issuance of the first occupancy permit within the CD-RH zoned portion of the Property. Until such time as the reservation area is dedicated for public street purposes pursuant to proffer 2.2.4.2, the reservation area may be used for open space and passive recreation purposes on an interim basis as shown on Sheet 2 of the Concept Plan. The Owner shall remove any structures, including asphalt trails, constructed within the reservation area upon dedication of the right-of-way at no cost to the Town or VDOT.

2.2.4.2 Right-of-way Dedication. The Owner shall dedicate any land located within the 90-foot wide reservation area as shown on Sheet 2 of the CP that is needed for right-of-way for the Dulles Greenway Extension at no cost to the Town or VDOT upon approval of the construction plans for the roadway extended to Catoctin Circle to be prepared by others, upon full funding or bonding of the improvements to be constructed by others, and upon written request of the Town. The Owner shall sign the required record plat and accompanying documents such as the deed for the right-of-way dedication prepared by others within thirty days of receipt of the Town's written request. The dedication of the right-of-way shall be conveyed in fee simple, free and clear of any and all liens to the Town by a Deed of Dedication. The Owner's obligation to dedicate this land and remove any improvements constructed within the dedication area specified in proffer 2.2.9.1 shall terminate if the construction plans are not approved and bonded or funded by others within twenty-one years of the date of approval of TLZM-2013-0006.

2.2.5 South King Street Turn Lanes

2.2.5.1. The Owner shall construct one northbound right-turn lane at the intersection of South King Street and Davis Avenue.

- 2.2.5.2. The Owner shall construct one westbound left-turn lane at the intersection of South King Street and Davis Avenue, creating dual left-turn lanes. The Owner also shall re-stripe the existing through left-turn to a through right-lane.
- 2.2.5.3 The Owner shall make any necessary alterations, if required by the Town or VDOT, to the existing traffic signal at this intersection as a result of the alterations to the intersection specified in this proffer 2.2.5. The Owner also shall install a pedestrian light on this traffic signal and install crosswalks where needed at this intersection if approved by VDOT or the Town.
- 2.2.5.4 The Owner shall provide a cash equivalent contribution to the Town for the improvements specified in this proffer 2.2.5, in the event these improvements are constructed by others. The cash equivalent contribution shall be provided upon written request of the Town with the invoices of the construction costs provided to the Owner.

2.2.6 South King Street Traffic Signal

The Owner shall prepare and submit a warrant study for a traffic signal at the intersection of South King Street and the eastbound interchange ramp of the Route 15 Bypass and shall contribute \$200,000 towards the installation of the signal prior to the issuance of the zoning permit for the 100th residential dwelling unit on the CD-RH zoned portion of the Property, or the issuance of zoning permits for 22,000 square feet of retail uses on the Property, or the issuance of a zoning permit for Building C-1. If the traffic signal is not warranted, the Owner shall contribute the \$200,000 to the Town to be used toward other transportation improvements in the Town.

2.2.7 Cash Contribution for Off-site Transportation Improvements

The Owner shall provide a cash contribution totaling \$800,050 for off-site transportation improvements. This cash contribution shall be paid at the time of issuance of the zoning permit for each residential unit in the amount of \$1,797 for each multi-family unit located in the CD-MUO district and \$2,097 for each single-family attached dwelling unit located in the CD-RH district.

3. OPEN SPACE AND RECREATION

3.1 Internal Open Space and Recreation

3.1.1 Open Space Amenity Areas

The Owner shall provide internal open space areas as shown on Sheet 24 of the CP and the amenities within these open space areas as shown on Sheets 25 through 29 of the CP. These areas include the following amenities: (i) the plaza located between buildings MU2 and MU3 including the details shown on Sheet 28 of the CP; (ii) the “Developer’s Option” amenity with details as shown on Sheet 27 of the CP and which shall be constructed prior to the approval of 133rd residential zoning permit for the Property; (iii) the linear park labeled #4 on Sheet 24 of the CP with the amenities as shown on Sheet 26 of the CP; (iv) the interim minimum eight-foot asphalt trail within the Dulles Greenway right-of-way reservation area as shown on Sheet 27 of the CP; and (v) the Tuscarora Greenway Trail located on the Property as a minimum ten-foot wide asphalt multi-purpose trail as shown on Sheet 24 of the CP and which shall be constructed prior to the issuance of the 245th residential occupancy permit.

3.1.2 Pocket Parks

The Owner shall construct the amenity areas identified as pocket parks #1, #2 and #3 on Sheet 24 of the CP with the amenities as shown on Sheet 25 of the CP prior to the approval of occupancy permit for the dwelling unit closest to that pocket park.

3.1.2 Bicycle Facilities

The Owner shall install a minimum of six bicycle parking racks to be interspersed throughout the Property to be located in the vicinity of each of the commercial buildings: C-1, C-2, MU-1, MU-2, MU-3 and MU-4.

3.1.3 Community Meeting Room Facility

The Owner shall provide a minimum of 2,000 square feet of the ground floor commercial space in Building MU-4 for use as a community meeting room by the Property Owners’ Association established pursuant to proffer 6. The use of this space by the POA may cease only upon the POA gaining control of the association and upon a vote of the majority of the residential property owners to terminate the use of the community meeting room.

3.2 Public Park Contribution

The Owner shall contribute \$1,000 per residential unit, at the time of issuance of the occupancy permit for each residential unit, to the Town of Leesburg which may be used for capital improvements to Town of Leesburg recreation facilities operated by the Department of Parks and Recreation.

4. **SITE DESIGN**

4.2 Energy Saving Design

All dwellings on the Property shall be designed and constructed as ENERGY STAR 2.0 ® or Home Energy Rating System (HERS) qualified homes. With the submission of a zoning permit for each building, the Applicant shall provide certification that the construction documents have been reviewed by a qualified Home Energy Rater, and that the building meets ENERGY STAR 2.0 ® or HERS standards. Prior to the issuance of an occupancy permit, a "wet" ENERGY STAR 2.0 ® or HERS label must be verified at each dwelling unit's electrical panel and a copy of the Home Energy Rating report shall be provided by the Home Energy Rater. The Home Energy Rating report shall include the unit address, builder's name, Rater's name and date of verification.

4.3 Dumpster Pad

The dumpsters use for the mixed-use buildings MU-1, MU-2, MU-3 and MU-4 shall be designed to compact the refuse and minimize odors emanating from the dumpster. The dumpster enclosures shall include a sign limiting the hours trash and recycling pick-up may occur.

4.4 Filtrerra Devices

If Filterra devices are used to satisfy BMP requirements and conflict with proposed street tree locations, alternate spacing of street trees to accommodate the Filterra device shall be provided prior to any determination that the required street trees cannot be provided. Understory trees, subject to the approval of the Zoning Administrator, shall be installed as the vegetative material with Filterra devices

5. **FIRE AND RESCUE SERVICES**

5.1 Residential Uses

Upon issuance of the Zoning Permit for each residential unit on the Property, the Owner shall provide the Town with a one-time cash contribution of \$100.00 per residential unit for distribution to the fire and rescue companies providing primary service to the Property. This contribution shall be divided equally between those fire and rescue companies that primarily serve the Property.

5.2 Non-residential Uses

Upon issuance of each Zoning Permit for each non-residential use, the Owner shall provide the Town with a one-time cash contribution of TEN CENTS (\$.10) per gross square foot of commercial use on the Property for distribution to the fire and rescue companies providing primary service to the Property. This contribution shall be divided equally between the primary servicing fire and rescue companies.

5.3 Cessation of Contribution

The obligation to provide this contribution shall cease at such time as the provision of fire and rescue services is no longer provided by predominantly volunteer organizations or at such time as either the Town of Leesburg or the County of Loudoun levies a tax payment on the Property for these services.

5.4 Emergency Vehicle Access during Construction

The Owner shall provide, no later than the framing stage of construction, all-weather, gravel-compacted access for emergency vehicles, acceptable to the Fire Marshal, to all portions of the Property under construction.

6. PROPERTY OWNERS ASSOCIATION

6.1 Town Review

Documents to establish a Property Owners' Association (POA) for the Property, in which all property owners (both residential and non-residential) will be required to be a member, will be submitted to the Town for review and approval as to form and consistency with these proffers. The POA documents shall state that no provisions shall be amended by the POA which address any matters that are proffered or are otherwise required by this rezoning approval without prior approval by the Town.

6.2 Timing

The POA will be established prior to approval of the first Site Plan for the Property.

6.3 Duties

The POA shall have, among its duties, snow removal, trash removal and the maintenance of all commonly owned facilities on the Property including the underground stormwater management facility, private roads and private access easements, private parking areas, private storm drainage, private common areas,

including the POA-owned open space, trails, greens, recreational facilities, bicycle parking facilities and play areas. The POA also shall be responsible for enforcing the covenants on the property, including the covenant that garage space is not permitted to be converted to habitable space.

6.4 Garage Conversions

The POA documents shall include a provision that will prohibit any garage space from being converted to any type of habitable and/or living space or be used principally for other than the storage of vehicles.

6.5 Private Parking Courts

The POA documents shall include a statement that the private parking courts cannot be accepted as public roads by the Town of Leesburg and will be the responsibility of the POA.

6.6 Private Yard Maintenance

The POA documents shall include a provision making the POA responsible for maintaining the yards and landscaping of all of the lots within the Property, including the individually owned lots for the single family attached dwelling units. The POA shall monitor the building-mounted light fixtures on the rear of the dwelling units, which provide safety lighting for residential common parking court travel ways (alley ways), to ensure these light fixtures remain lit during nighttime hours and to ensure light bulbs are replaced in a timely fashion.

6.7 Street Tree Maintenance

The POA documents shall include a provision making the POA responsible for maintaining the street trees within the public street right-of-way.

7. **NOISE ATTENUATION**

The Owner shall install windows and doors with a minimum 32 Sound Transmission Class ("STC") rating on the south, east and west sides of the following buildings as shown on Sheet 2 of the CP: A, the four units of building D closest to the Route 15 Bypass, J, K, L, P, Q, W, X, CC, DD, LL, MM, and the unit closest to the Route 15 Bypass in buildings O, S, V and Z. A Commonwealth of Virginia licensed acoustical engineer shall submit a report with the engineer's seal prior to issuance of the occupancy permit for any of the units in the buildings as listed in this proffer certifying the following information: the STC rating of the installed windows and the interior noise level. Furthermore, the Owner shall include a disclosure statement to the buyers of the units in the buildings as listed in this proffer, which indicates that the home is located with the Noise Abatement Corridor Overlay District (NAC). The Owner also shall provide copies of the report provided to the Town of Leesburg pursuant to this proffer.

8. CAPITAL FACILITIES CONTRIBUTION

The Owner shall provide, upon issuance of each occupancy permit for a dwelling unit, a one-time cash contribution in the amount of \$7,809 per each multi-family dwelling unit and \$15,619 for each single-family-attached dwelling unit, which may be used for schools or capital projects in the Town of Leesburg.

9. CONSTRUCTION TRAFFIC

The Owner shall prohibit construction traffic from using Davis Court to access the Property. Instead, construction traffic shall use Davis Avenue Extension for access or a temporary construction access drive in the Davis Avenue Extension right-of-way until the permanent roadway is constructed.

10. WAIVERS AND MODIFICATIONS

Approval of this application #TLZM-2013-0006 does not express or imply any waiver or modification of the requirements set forth in the Subdivision and Land Development Regulations, the Zoning Ordinance, or the Design and Construction Standards Manual, except as expressly approved in application #TLZM-2013-00036 and all final plats, development plans, and construction plans shall remain subject to these applicable Town regulations.

11. ESCALATION CLAUSE

All monetary contribution proffers shall escalate on a yearly basis beginning one year from the date of approval of the first site plan containing residential buildings and/or mixed use buildings or the first record plat containing such buildings, whichever occurs first in time, and which shall change effective each January 1 thereafter, based on the Consumer Price Index (CPI) for the Washington SMSA.

12. BINDING EFFECT

The undersigned owners of record of the Property do hereby voluntarily proffer the conditions stated above, which conditions shall be binding on the Owner, its successors and assigns shall have the effect specified in Section 15.2-2303, et seq. of the Code of Virginia (1950), as amended.

[SIGNATURES ON FOLLOWING PAGES]

Witness the following signatures and seals this day of _____, 2014.

MREC LD Leesburg Crossing, LLC
a Virginia limited Liability Company

By: _____

Name: Leonard S. Mitchel
Its: Managing Partner

State of _____
City/County of _____, to-wit:

I, Notary Public in and for the state and city/county aforesaid, do hereby certify that _____, whose name is signed to the foregoing instrument, personally appeared before me and has this day acknowledged that he executed the foregoing proffers with the full power and authority to do so.

Given under my hand this _____ day of _____, 2014

Notary Public

My Commission Expires:

Date

Witness the following signatures and seals this day of _____, 2014.

Edward R. Mooney, Jr., Trustee

By: _____

Name: _____

Its: _____

State of _____

City/County of _____, to-wit:

I, Notary Public in and for the state and city/county aforesaid, do hereby certify that _____, whose name is signed to the foregoing instrument, personally appeared before me and has this day acknowledged that he executed the foregoing proffers with the full power and authority to do so.

Given under my hand this _____ day of _____, 2014

Notary Public

My Commission Expires:

Date

Witness the following signatures and seals this day of _____, 2014.

Stephen J. Panouras, Trustee

By: _____

Name: _____

Its: _____

State of _____

City/County of _____, to-wit:

I, Notary Public in and for the state and city/county aforesaid, do hereby certify that _____, whose name is signed to the foregoing instrument, personally appeared before me and has this day acknowledged that he executed the foregoing proffers with the full power and authority to do so.

Given under my hand this _____ day of _____, 2014

Notary Public

My Commission Expires:

Date

Witness the following signatures and seals this day of _____, 2014.

Failmezger Investments, LLC
A Virginia Limited Liability Corporation

By: _____

Name: George R. Failmezger
Its: Managing Member

State of _____
City/County of _____, to-wit:

I, Notary Public in and for the state and city/county aforesaid, do hereby certify that _____, whose name is signed to the foregoing instrument, personally appeared before me and has this day acknowledged that he executed the foregoing proffers with the full power and authority to do so.

Given under my hand this _____ day of _____, 2014

Notary Public

My Commission Expires:

Date

EXHIBIT A

Crescent Parke Zoning Map Amendment

Prepared by Bowman Consulting

Dated December 23, 2013 and Revised through December 23, 2014